

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ALMA RAMIREZ, ET AL.,
Plaintiffs,
v.
CITY OF GILROY, et al.,
Defendants.

Case No.17-cv-00625-VKD

**ORDER RE OCTOBER 30, 2018 JOINT
DISCOVERY DISPUTE LETTER**

Re: Dkt. No. 50

Defendants City of Gilroy and Adam Moon seek to re-open fact discovery to obtain the following documents and things: (1) decedent Hector Alvarez's juvenile criminal records and the deposition of a person most knowledgeable from Santa Clara County ("the County") concerning those records, and (2) May 2015 audio recordings of telephone calls between Mr. Alvarez and Sovonnah Flores, mother of the two minor plaintiffs, while Mr. Alvarez was in jail. Dkt. No. 50 at 1. Plaintiffs Alma Ramirez and minors H.A. and L.A. argue that defendants' discovery requests are untimely and seek material that is irrelevant and unduly prejudicial. The Court finds this matter suitable for decision without a hearing.

For the reasons stated below, the Court denies defendants' motion.

I. BACKGROUND

Plaintiffs filed this action on February 7, 2017. Dkt. No. 1. In the initial scheduling order, the Court required the parties to complete fact discovery by November 14, 2017. Dkt. No. 24. On October 23, 2018, the Court extended the fact discovery deadline to January 16, 2018. Dkt. No. 31. On January 3, 2018, the Court extended the fact discovery deadline a second time to February 16, 2018, in part to allow the parties to complete the depositions of key fact witnesses. Dkt. No. 33.

1 Pursuant to Civil Local Rule 37-3, all discovery motions were due to be filed no later than
2 February 23, 2018, seven days after the close of fact discovery.

3 **II. DISCUSSION**

4 **A. Mr. Alvarez's Juvenile Criminal Records**

5 Defendants did not subpoena Mr. Alvarez's juvenile criminal records or seek the
6 deposition of a County representative until December 28, 2017, only 19 days before the then-
7 existing January 16, 2018 discovery deadline. Dkt. No. 50 at 2. In late January 2018, the County
8 advised defendants that it could not produce the records or deponent without a state court order
9 pursuant to California Welfare and Institutions Code § 827. *Id.*; Cal. Welf. & Inst. Code §
10 827(a)(2)(A) ("[J]uvenile case files . . . that pertain to a deceased child . . . shall be released to the
11 public pursuant to an order by the juvenile court after a petition has been filed and interested
12 parties have been afforded an opportunity to file an objection."). Defendants filed a petition for
13 such an order pursuant to section 827 on February 6, 2018 and are still awaiting a decision. Dkt.
14 No. 50 at 2. Defendants did not file a motion to compel the records or the deposition by the
15 deadline for filing discovery motions.

16 Defendants say that they did not learn about Mr. Alvarez's juvenile records and their
17 potential relevance to damages until after the depositions of certain party witnesses. However,
18 defendants do not explain why they could not have discovered the existence and significance of
19 these records before taking these party depositions, and they do not explain why they waited until
20 the very end of the discovery period (or the extended discovery period) to take these party
21 depositions in the first place. Defendants had nine months to conduct discovery. *Id.* at 4.
22 Defendants were not diligent in seeking testimony concerning the juvenile records and have not
23 otherwise demonstrated good cause for modifying the case schedule under Rule 16(b)(4) of the
24 Federal Rules of Civil Procedure.

25 Even if the Court found good cause for defendants' delay in seeking this discovery, the
26 Court is not persuaded that evidence of Mr. Alvarez's juvenile criminal records is relevant to any
27 claim or defense in this case. Defendants argue that Mr. Alvarez's "pattern of escalating criminal
28 behavior" would have led to significant jail or prison time had he lived, and that this incarceration

1 would have negatively affected his relationship with plaintiffs, thereby reducing the amount of
2 damages they can prove. *Id.* Defendants cite no authority to support their argument that this kind
3 of evidence is relevant to damages and the Court is aware of none. Their theory of relevance
4 appears to be entirely speculative, and the Court has serious concerns about its admissibility for
5 any purpose at trial, let alone to rebut plaintiffs' claim for damages.¹

6 **B. Audio Recordings of Jail Calls**

7 On December 28, 2017, defendants also subpoenaed the Santa Clara County District
8 Attorney for documents and a deposition relating to prosecution of Mr. Alvarez. Dkt. No. 50 at 2.
9 On February 27, 2018, defendants deposed a representative of the District Attorney and obtained
10 some responsive documents, including a summary of the jail calls. *Id.* Defendants did not file a
11 motion to compel production of the audio recordings by the deadline for filing discovery motions.

12 Defendants say that they did not become aware of the existence of the jail calls until the
13 end of the discovery period in February 2018, and that they did not learn until March 2018 (after
14 the close of discovery) that they could not obtain the complete audio recordings of the jail calls
15 without a subpoena to the Santa Clara County Sheriff's Office. *Id.* at 4–5. Defendants do not
16 explain why they waited until the end of the discovery period to seek discovery from the District
17 Attorney, or why they delayed taking the District Attorney's deposition for nearly two months
18 after serving the subpoena on December 28, 2017.

19 Even if the Court found good cause for defendants' delay in seeking this discovery, the
20 Court is not persuaded that the audio recordings of Mr. Alvarez's telephone calls are relevant to
21 any claim or defense. Defendants say that the audio recordings of the calls reveal that Mr. Alvarez
22 threatened Ms. Flores. *Id.* at 4. They argue that the negative or hostile relationship between Mr.
23 Alvarez and Ms. Flores in turn reflects on Mr. Alvarez's relationship with the minor plaintiffs.
24 Defendants argue that these calls constitute relevant evidence rebutting plaintiffs' damages claims.
25 Defendants cite no authority to support their argument that this kind of evidence is relevant to
26 damages and the Court is aware of none. As with the juvenile criminal records, defendants' theory

27
28¹ The Court does not decide the question of admissibility here.

1 of relevance appears to be entirely speculative, particularly given that the calls took place before
2 the births of both minor plaintiffs. *Id.* at 7.

3 **III. CONCLUSION**

4 For the reasons set forth above, the Court denies defendants' request to re-open fact
5 discovery to obtain evidence of Mr. Alvarez's juvenile criminal records and his telephone calls
6 from jail.

7 **IT IS SO ORDERED.**

8 Dated: November 29, 2018

9
10 
11 VIRGINIA K. DEMARCHI
12 United States Magistrate Judge